

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 201908809	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/26/2019 1:00 PM	Location of Incident: Inside § 87(2)(b)	Precinct: 79	18 Mo. SOL 3/26/2021	EO SOL 11/10/2021	
Date/Time CV Reported Tue, 10/08/2019 11:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/08/2019 11:37 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael DeFilippo	08566	956575	079 PCT
2. POM Joshua Acosta	03792	955705	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Alex Morocho	5420	939794	079 PCT
2. POM Harold Hernandez	15658	943526	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joshua Acosta	Abuse: Police Officer Joshua Acosta entered § 87(2)(b) in Brooklyn.	
B.POM Michael DeFilippo	Abuse: Police Officer Michael Defilippo entered § 87(2)(b) in Brooklyn.	
C.POM Joshua Acosta	Abuse: Police Officer Joshua Acosta threatened § 87(2)(b) with the use of force.	
D.POM Michael DeFilippo	Abuse: Police Officer Michael Defilippo threatened § 87(2)(b) with the use of force.	
E.POM Joshua Acosta	Abuse: Police Officer Joshua Acosta frisked § 87(2)(b)	
F.POM Michael DeFilippo	Abuse: Police Officer Michael Defilippo frisked § 87(2)(b)	
G.POM Joshua Acosta	Discourtesy: Police Officer Joshua Acosta spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On October 8, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of himself and his co-tenants, § 87(2)(b) and § 87(2)(b).

On September 26, 2019, at approximately 1 p.m., Police Officers Joshua Acosta and Michael DeFilippo from the 79th Precinct entered § 87(2)(b) in Brooklyn (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). PO Acosta and PO DeFilippo pointed their Tasers at § 87(2)(b) and § 87(2)(b) (**Allegations C and D: Abuse of Authority, § 87(2)(g)**), and frisked them, respectively (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). PO Acosta spoke discourteously to § 87(2)(b) (**Allegation G: Discourtesy, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

No arrests or summonses resulted from this incident.

Police body-worn camera footage was received for this incident (Board Review 01-Board Review 02).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joshua Acosta entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Police Officer Michael DeFilippo entered § 87(2)(b) in Brooklyn.

The following facts are undisputed: On September 26, 2019, at approximately 12:40 p.m., § 87(2)(b) from Front Gate Property Management Company called 911 and reported that he was standing in front of his vacant three-story single unit building, located at § 87(2)(b) in Brooklyn, and that two black men, identified via investigation as § 87(2)(b) and § 87(2)(b) were inside without § 87(2)(b)'s authorization. § 87(2)(b) said he was unable to enter the building because the two men had placed a metal chain around the main door (Board Review 03 -Board Review 04). PO Acosta and PO DeFilippo responded to the location, spoke with § 87(2)(b), entered the building, and saw § 87(2)(b) and § 87(2)(b) inside, who said they resided at the address.

§ 87(2)(b) (Board Review 05) was not present when the officers entered the building, but said he saw them exiting the building together with § 87(2)(b) and § 87(2)(b). § 87(2)(b) said he, § 87(2)(b) and two other individuals have lived in the building for “many years,” and that the building belonged to a deceased relative. § 87(2)(b) later said he did not know who the building belonged to, acknowledged that the building was vacant and abandoned, and that he and the other occupants do not pay rent or have any lease arrangements, but are responsible for the maintenance of the building. § 87(2)(b) initially said he was aware that some “Jewish” people were trying remove him and the other occupants from the building, but later denied that there were any actions to evict the occupants from the building, and said the building had no owner. § 87(2)(b) failed to provide the investigation with any documents establishing that he and the other individuals have resided at that address for an extended period of time.

§ 87(2)(b) and § 87(2)(b) were unavailable to the investigation (Board Review 06).

§ 87(2)(b) (Board Review 07), in a phone statement to the CCRB, said that the building belongs to a company named § 87(2)(b), and that he was the property manager. He said the building has been vacant and uninhabitable for over five years, and that neither he nor the owners gave § 87(2)(b) and the other individuals permission to be in the building. § 87(2)(b) did not know how long § 87(2)(b) and the other individuals have lived in the building, but said he often visited the property, and that this was the first time he noticed people inside. § 87(2)(b) however, did not recall the last time he visited the property prior to this incident. § 87(2)(b) said he told the officers that the individuals in the building were trespassing, and that he wanted them out. PO Acosta and PO DeFilippo ordered § 87(2)(b) to produce the title deed for the property, but § 87(2)(b) did not have it on his person. He left the location to

retrieve the documents from his home, but ultimately never returned. § 87(2)(b) did not recall why he failed to return to the scene, nor did he recall if the officers ever explicitly asked for his permission to enter the building. § 87(2)(b) declined to provide the investigation with any documents establishing his company's proprietary management of the building.

PO Acosta (Board Review 08) and PO DeFilippo (Board Review 09) § 87(2)(g) said § 87(2)(b) showed them an outdated title deed for the property, and they thus informed § 87(2)(b) that they were unable to establish his authority over the property without an updated title deed. PO Acosta and PO DeFilippo remained on scene after § 87(2)(b) left to retrieve the requested documents, and spoke to some neighbors from adjacent buildings. One of the neighbors informed the officers that he often saw multiple people entering and exiting the building through a side entrance underneath the stoop leading to the front door. PO Acosta and PO DeFilippo did not recall if § 87(2)(b) or the neighbor told them how long they believed the individuals had been inside the building, nor did they provide any information that would have caused the officers to believe that the people inside the building were armed or dangerous. PO DeFilippo, based on the officers' conversations with § 87(2)(b) and the unidentified neighbor, and the fact that the building was in a deplorable state, thus concluded that the people inside the building were possibly squatters and not trespassers. PO DeFilippo did not recall if he relayed his observations to PO Acosta.

PO Acosta and PO DeFilippo proceeded to the entrance underneath the stoop, and entered the building through a side door that was ajar. PO Acosta and PO DeFilippo both made the decision to enter the building, and said they did so primarily to ensure that there was nobody inside while they waited for § 87(2)(b) to return. PO Acosta and PO DeFilippo acknowledged that they did not seek § 87(2)(b)'s consent prior to entering, but said they did not think § 87(2)(b) would have objected to their entry because he had requested that the officers remove the individuals from the building. PO Acosta and PO DeFilippo, however, acknowledged that they had not established whether § 87(2)(b) had authority over the building at the officers entered, and thus did not know whether § 87(2)(b) was in a position to give consent.

PO Acosta and PO DeFilippo saw § 87(2)(b) and § 87(2)(b) on the third floor, and asked them what they were doing inside the building. § 87(2)(b) initially said they were workers renovating the building, but later said that they were residents and that they had been living there for over two months. § 87(2)(b) and § 87(2)(b) however, failed to provide the officers with any documentation establishing that they had been in the building for over 30 days. PO Acosta and PO DeFilippo, thus asked the two men to accompany them outside so the officers could further investigate the incident. The officers and the two men proceeded to the second floor, where § 87(2)(b) removed the metal chain from the front door, and they all exited. § 87(2)(b) approached the officers and said he also resided at the address. PO DeFilippo did not recall if § 87(2)(b) provided any documents establishing how long he had lived at the location. PO Acosta, however, said that § 87(2)(b) showed the officers some mail he had received at the address, but did not recall the type of mail § 87(2)(b) showed to the officers, except that it appeared to PO Acosta that § 87(2)(b) had been at the location for over 30 days.

The officers and the civilians spent approximately 20 minutes waiting for § 87(2)(b) but he did not return, and was unresponsive to multiple contact attempts. The patrol supervisor, Sgt. Alex Morocho, responded to the scene, and was briefed by the officers about what had transpired. Sgt. Morocho determined that the incident was a civil issue and not a police matter. PO Acosta gave § 87(2)(b) his business card, and told the three civilians that they were free to return inside the building. § 87(2)(b) returned to the location just as the officers were leaving, and still could not provide the officers with the updated title deed. The officers thus informed him to pursue the dispute in Housing court.

A search of the NYCMaps database revealed that the building is owned by § 87(2)(b) (Board Review 10). A Lexis Nexis property search also confirmed that the building is owned by

§ 87(2)(b) and that he purchased the building in November 2013 from § 87(2)(b) (Board Review 11).

New York State Penal Law, Section 140.10, states that a person is guilty of criminal trespass in the third degree when he or she knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders. The determination of whether one enters and remains unlawfully hinges on the question of whether the person is licensed and privileged to be on the premises. Criminal trespass in the third degree is a class B misdemeanor (Board Review 12).

New York State Real Property Actions and Proceedings Law, Section 501.01, defines a “squatter” or an “adverse possessor” as a person or entity who occupies the property of another person or entity with or without the knowledge of the other’s superior ownership rights, in a manner that would give the owner a cause of action for ejectment (Board Review 13). In New York City, squatters are classified as tenants and receive temporary rights as such after living in a property for a period of 30 days. New York City Administrative Code Section 26-521 (Board Review 14).

The role of a uniformed member of service when called to the scene of a civil situation is to preserve and prevent the commission of a crime. The authority to break and enter pursuant to purely civil proceedings such as evictions and civil commitments is given to the City Marshall. Patrol Guide Procedure 214-13 (Board Review 15).

Absent consent or exigent circumstances, an officer may not make a warrantless entry into a given premises in which an individual has a legitimate expectation of privacy. Payton v. New York, 445 U.S. 573 (1980) (Board Review 16). In determining whether exigent circumstances are present, factors that apply are: the gravity or violent nature of the offense, whether the suspect is reasonably believed to be armed, a clear showing of probable cause that the suspect committed the crime, strong reason to believe that the suspect is in the premises being entered, a likelihood that the suspect will escape if not swiftly apprehended, and the peaceful circumstances of the entry. People v. McBride, 14 N.Y. 3d 440 (2010) (Board Review 17).

The police may lawfully enter a premises on the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question. Where two or more individuals share a common right of access to the premises, any one of them has the authority to consent in the absence of the others People v. Cosme 48 N.Y.2d 286 (1979) (Board Review 18). The police, however, cannot act merely upon the bald assertion that the consenting party possess the requisite authority over the premises, and must proceed only after making some inquiry into the actual state of authority when faced with a situation which would cause a reasonable person to question the consenting party’s power or control over the premises or property. People v. Adams, 53 NY2d 1 (1981) (Board Review 19).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Joshua Acosta threatened § 87(2)(b) with the use of force.

Allegation (D) Abuse of Authority: Police Officer Michael DeFilippo threatened § 87(2)(b) with the use of force.

Allegation (E) Abuse of Authority: Police Officer Joshua Acosta frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Michael DeFilippo frisked § 87(2)(b)

PO DeFilippo's and PO Acosta's BWC (Board Review 01- Board Review 02) shows them entering the ground floor of the building with their Tasers drawn and their flashlights pointed. It is visibly dark, and there appears to be hanging electrical wires, collapsing walls, and debris of concrete and wood scattered all around the floor. The officers shine their flashlights into the building and make their way to the third floor, all while announcing their presence and asking if there is anyone inside the building. At 04:00, PO Acosta's BWC shows him making his way to third floor and sees § 87(2)(b) identified via investigations, in one of the rooms. PO Acosta identifies himself as police, points his Taser at § 87(2)(b) and says, "Don't move. I got my Taser out... I swear to God I'll tase you." § 87(2)(b) appears to raise his hands with his palms wide open, and remains still. At 04:10, PO Acosta approaches § 87(2)(b) with his Taser still pointed, and orders § 87(2)(b) to lie on the floor. § 87(2)(b) complies. At 04:18, PO Acosta, holds his Taser, which is still pointed at § 87(2)(b) with his right hand, and uses his left hand to frisk § 87(2)(b)'s lower body. At 04:45, PO Acosta instructs § 87(2)(b) to get up, and still appears to be holding his Taser, which is pointed towards the floor. At 07:05, PO Acosta appears to holster his Taser.

At 04:18, PO DeFilippo's BWC, shows him shining his flashlight on § 87(2)(b) identified via investigation, who appeared to be sleeping on the floor in a separate room. PO DeFilippo instructs § 87(2)(b) to get up, and he complies. At 04:47, PO DeFilippo frisks § 87(2)(b) on his upper and lower body. It is unclear from the video if PO DeFilippo points his Taser directly at § 87(2)(b).

As discussed earlier, § 87(2)(b) and § 87(2)(b) were unavailable to the investigation, and § 87(2)(b) did not witness this portion of the incident.

PO Acosta and PO DeFilippo both said that they entered the building with their Tasers pointed because they did not know who was potentially inside the building, and whether such individuals were armed, and that this in addition to the fact that the building was in a deplorable and hazardous condition caused them to fear for their safety. PO DeFilippo acknowledged pointing his Taser at § 87(2)(b). PO DeFilippo and PO Acosta said that they had not received any information and did not observe anything that would have caused them to believe that the individuals in the building were armed, nor did they observe any bulges on § 87(2)(b) and § 87(2)(b) but said they pointed their Tasers and frisked the two men generally out of the abundance of caution, as well as mitigate their above espoused safety concerns. PO Acosta and PO DeFilippo provided no other reasons for pointing their Tasers and frisking the two men.

A conducted electrical weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Active resistance includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing,

pushing, or verbally signaling an intention to avoid or prevent being taken into custody. Active aggression consists of a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. NYPD Patrol Guide, Procedure 221-08 (Board Review 20).

An officer can frisk an individual if the officer reasonably believes the individual is armed and dangerous. People v. DeBour 40 N.Y.2d 210 (1976) (Board Review 21).

§ 87(2)(g)

Allegation (G) Discourtesy: Police Officer Joshua Acosta spoke discourteously to § 87(2)(b).

§ 87(2)(b) said that § 87(2)(b) called him on his cell phone while the officers were inside the building, and that he overheard one of the officers, whose voice resembled that of PO Acosta, say to § 87(2)(b) “Get your shit, it is time to go.”

As previously discussed, § 87(2)(b) and § 87(2)(b) were unavailable to the investigation.

PO Acosta and PO DeFilippo both denied that PO Acosta used any form of profanities against any of the civilians on scene.

PO Acosta’s and PO DeFilippo’s BWCs, at 12:18, shows § 87(2)(b) requesting to make a phone call while he, § 87(2)(b) and the two officers are inside the building. The officers agree, and § 87(2)(b) makes his phone call. The officers escort the two men out of the building after § 87(2)(b)’s phone call. The BWCs, which captured the entirety of this incident, does not show any of the officers making the alleged discourteous statement to § 87(2)(b) nor does it depict the officers using any form of profanities against any of the civilians.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 24 -Board Review 25).
- PO Acosta has been a member-of-service for six years and has been a subject in once CCRB complaint and two allegations, neither of which was substantiated, § 87(2)(g) [REDACTED]
- PO DeFilippo has been a member-of-service for five years, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On April 21, 2020, a Notice of Claim inquiry was sent the NYC Office of the Comptroller, and the inquiry is still pending. The result will be added to the case file upon receipt (Board Review 26).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- According to OCA, § 87(2)(b) does not have any history of convictions in New York City (Board Review 29).

Squad No.: 1

Investigator:	<u>Enoch Sowah</u> Signature	<u>Inv. Sowah</u> Print Title & Name	<u>04/29/20</u> Date
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Squad Leader:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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